

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Montana State Office

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In Reply To:

1610(923)P

November 3, 2005

EMAIL TRANSMISSION – 11/04/05

Instruction Memorandum No. MT-2006-009

Expires: 9/30/07

To: State Management Team
Attention: Planning and Environmental Coordinators

From: Deputy State Director, Division of Resources

Subject: Washington Office (WO) Instruction Memorandum (IM) No. 2005-058, End of the Fiscal Year Report to Council on Environmental Quality (CEQ) for Environmental Assessments (EAs) and Environmental Impact Statements (EISs) **DD: 11/21/05**

Program Area: National Environmental Policy Act (NEPA) compliance

Purpose: This Instruction Memorandum (IM) formally requests from field offices responses to an annual data call on cooperating agencies.

Policy/Action: This data call is not new; however, response format and protocols have changed slightly from previous years. The primary changes are:

1. The reporting period has been increased from 6 to 12 months and aligned with the fiscal year;
2. CEQ has decreased the amount of information requested; and
3. we have a different protocol for reporting EAs (we now provide the number of EAs that are finished (vs. started) during the reporting period).

Practically, this means that field offices should determine, for the period of October 1, 2004, through September 30, 2005, the number of **EAs finished** and **EISs started** (indicated by an Notice of Intent (NOI) being published within the reporting period); how many of those involved potential cooperating agencies; and in cases with potential cooperating agencies, some additional information relating to whether the agency actually signed on as a formal cooperating agency.

Field offices should enter this information into Attachment 1 of this IM and submit it electronically to Katie A Stevens (Katie_A_Stevens@blm.gov) by the due date of November 21, 2005. Attachments 2 (WO IM No. 2005-058) and 3 (Frequently Asked Questions) to this IM provide additional information relative to the information requested (i.e., definitions of cooperating agency, reasons status was not accepted/offered); one attachment to the WO IM has been deleted because it restated previously provided information.

Timeframe: This IM takes effect immediately.

Budget Impact: None

Background: The Bureau of Land Management Montana State Office has submitted totals of EAs and EISs, with supporting information regarding cooperating agency status on each of those EAs/EISs, to the Washington Office biannually. Response protocols have been slightly updated each year in response to feedback to CEQ from federal agencies.

In future years, this information may be available via Montana's internet-based NEPA log, at which time it may not be necessary for field offices to submit individual responses.

Additional background information is provided in Attachments 2 and 3 to this email.

Manual/Handbook Sections Affected: None.

Contact: For questions regarding this IM, please contact Katie Stevens, (406) 896-5246, or Katie_A_Stevens@blm.gov.

Signed by: Randy D. Heuscher, Acting

Authenticated by: Merry Prestridge (MT923)

3 Attachments

1-Report format (2 pp)

2-WO IM 2005-058 (2 pp)

3-Frequently Asked Questions and Answers (2 pp)

Distribution

Asst. FM Havre - 1

Asst. FM Glasgow - 1

INSERT NAME OF AGENCY SUBMITTING THE REPORT

Cooperating Agency Report to the Council on Environmental Quality

October 1, 2004 to September 30, 2005

I. Environmental Impact Statements:

EIS TITLE <i>(Insert Title of each EIS for which your agency published a NOI during the fiscal year)</i>	COOPERATING AGENCIES <i>(Insert names of agencies that were invited and agreed to participate in the EIS process as Cooperating Agencies or that requested Cooperating Agency status and reached agreement with the lead agency to participate in the EIS process as Cooperating Agencies)</i>	CA STATUS NOT ESTABLISHED OR ENDED <i>(Insert the name(s) of any agency(ies) that: declined in writing –required for federal agencies, see 40 CFR 1501.6(c) – or verbally to participate as a Cooperating Agency; requested Cooperating Agency status but was unable to reach agreement to participate as a Cooperating Agency; or that assumed Cooperating Agency status which was subsequently ended and the reason Cooperating Agency status was not established or was ended – see 5 listed reasons below)</i>	STATUS OF EIS <i>(Insert the following dates as mm/dd/yyyy)</i>
			NOI: DEIS NOA: FEIS NOA: ROD:
			NOI: DEIS NOA: FEIS NOA: ROD:
			NOI:

			DEIS NOA: FEIS NOA: ROD:
			NOI: DEIS NOA: FEIS NOA: ROD:

Reasons CA status was not established or why it ended:

1. Potential Cooperating Agency lacked special expertise and jurisdiction by law.
2. Potential Cooperating Agency lacked authority to enter into an agreement to be a CA.
3. Potential or active CA lacked agreement with the agency.
(e.g., unable to accept the scope of the analysis or the purpose and need for the proposed action; unable to accept responsibilities and/or milestones for analysis and documentation; unable to develop information/analysis of all reasonable alternatives; unable to prevent release of predecisional information; misrepresents the process or the findings presented in the analysis and documentation).
4. Potential or active CA lacked capacity (training or resources) to participate.
(e.g., unable to participate during scoping and/or throughout the preparation of the analysis and documentation as necessary to meet process milestones; unable to identify significant issues, eliminate minor issues, identify issues previously studied, or identify conflicts with the objectives of regional, State and local land use plans, policies and controls in a timely manner; unable to assist in preparing portions of the review and analysis and help resolve significant environmental issues in a timely manner; unable to provide resources to support scheduling and critical milestones).
5. Other (specify).

II. Environmental Assessments:

	Total
Number of EAs completed by your agency during the fiscal year	
Number of those EAs your agency prepared with CAs	
The reason(s) from the list below that cooperating agency status was not established or was ended (NOTE: agencies may replace this row of the report with a paragraph describing the most frequent reasons)	(number) EAs – reason #1 (number) EAs – reason #2 (number) EAs – reason #3 (number) EAs – reason #4 (number) EAs – reason #5

Reasons CA status was not established or why it ended:

1. Potential Cooperating Agency lacked special expertise and jurisdiction by law.
2. Potential Cooperating Agency lacked authority to enter into an agreement to be a CA.
3. Potential or active CA lacked agreement with the agency.
(e.g., unable to accept the scope of the analysis or the purpose and need for the proposed action; unable to accept responsibilities and/or milestones for analysis and documentation; unable to develop information/analysis of all reasonable alternatives; unable to prevent release of predecisional information; misrepresents the process or the findings presented in the analysis and documentation).
4. Potential or active CA lacked capacity (training or resources) to participate.
(e.g., unable to participate during scoping and/or throughout the preparation of the analysis and documentation as necessary to meet process milestones; unable to identify significant issues, eliminate minor issues, identify issues previously studied, or identify conflicts with the objectives of regional, State and local land use plans, policies and controls in a timely manner; unable to assist in preparing portions of the review and analysis and help resolve significant environmental issues in a timely manner; unable to provide resources to support scheduling and critical milestones).
5. Other (specify).

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

January 12, 2005

In Reply Refer To:
1610(210) P

EMS TRANSMISSION 01/13/2005
Instruction Memorandum No. 2005-058
Expires: 09/30/2006

To: WO Officials, State Directors, and Center Directors
Attn: Deputy State Directors, State Office Planning and Environmental
Coordinators

From: Assistant Director, Renewable Resources and Planning

Subject: New Cooperating Agency Reporting Procedures/Requirements for
EIS's and EA's DD: 11/30/2005

Program Area: Environmental compliance – Cooperating Agency (CA) procedures.

Purpose: This Instruction Memorandum (IM) establishes the Council on Environmental Quality's (CEQ) new reporting procedures/requirements and format for reporting CA's participation in the Bureau's EIS and EA processes.

Background: CEQ issued updated guidance on CA status in implementing NEPA in January 2002. As part of that guidance and to measure "progress in addressing the issue of CA status," CEQ initiated biannual data calls to Federal agencies covering both EIS's and EA's begun during those 6-month time frames (March 1, to August 31, and September 1, to February 28/29).

A CA is any Federal, State, or local governmental agency or Indian Tribe that has either jurisdiction by law or special expertise regarding environmental impacts of a proposal or reasonable alternative for a major Federal action significantly affecting the quality of the human environment (see 40 CFR 1501.6 and 1508.5). Although this definition would appear to limit CA procedures to EIS-level actions, in its memorandum CEQ extended the procedures for possible, occasional use in the preparation of EA's.

Policy/Action: This memorandum contains new guidance issued by CEQ's Chairman (attachment 1) on December 23, 2004, that updates the January 2002 guidance which ends the six month reporting requirement and establishes an improved reporting mechanism. The new procedures/requirements and reporting format are based on recommendations from Federal agencies to more accurately measure their progress in assuring CA status to Federal and non-Federal governmental bodies that qualify for such status.

Federal agencies responsible for preparing NEPA analyses will now report to CEQ once each fiscal year (FY). The report to CEQ will be due three months after the close of the FY. For example, the first such report for October 1, 2004 through September 30, 2005 will be due on January 3, 2006.

For EIS's with a Notice of Intent published between October 1, 2004 and September 30, 2005, the lead agency will report: (1) the title of the EIS; (2) the names of the CA's for the EIS; (3) the names of agencies who declined an invitation to participate as a CA or who requested but failed to reach agreement on establishing CA status and agencies whose CA status was ended, and the reason(s) CA status was not established or was ended; and (4) the current status of the EIS (attachment 2). Reports after FY 05 would include updates to previous reports on EIS's. The reporting agency will provide updated information (for example: new and/or terminated CA's; new EIS status) in subsequent FYs by submitting the previous EIS report with new information inserted and highlighted.

For EA's, the lead agency will report: (1) the number of EA's completed between October 1, 2004 and September 30, 2005; (2) the number of those EA's which included participation of one or more CA's; and (3) the reasons agencies did not accept invitations or reach agreement to participate as CA's, or ended the CA status prior to completing the EA (attachment 2).

You will provide information on EIS's begun during the fiscal year reporting period, and on EA's completed during the fiscal year reporting period. For purposes of this report, an EIS is begun when the Notice of Intent (NOI) is published in the Federal Register, and an EA is completed when a Finding of No Significant Impact (FONSI) is completed or a NOI to prepare an EIS is published.

CA status under NEPA is not equivalent to other requirements calling for an agency to engage another governmental entity in a consultation or coordination process (e.g., Endangered Species Act section 7, National Historic Preservation Act section 106).

Major Changes: The major changes are: (1) increase the reporting period from six to twelve months; (2) align the reporting period with the fiscal year; (3) decrease the amount of information reported; (4) simplify the identification of challenges or barriers to establishing CA status; and (5) report completed rather than initiated environmental assessments. The attached document "Frequently Asked Questions and Answers" (attachment 3) will address major changes plus additional questions to help clarify further concerns you may have.

Time Frame: This IM is in effect as of the date signed.

Reporting Period: The first reporting period is October 1, 2004 through September 30, 2005. Information from the BLM State Offices for this reporting period must be received in WO-210 electronically or hard copy by November 30, 2005. The Bureau must provide a consolidated report to the Office of Environmental Policy and Compliance (OEPC) by December 16, 2005, which must report to CEQ by January 3, 2006.

If you have any questions concerning this memorandum, please contact Jordon Pope, Senior Planning and NEPA Analyst @ (202) 452-5048 or e-mail jordon_pope@blm.gov.

Signed by:
Thomas H. Dyer
Deputy Assistant Director
Renewable Resources and Planning

Authenticated by:
Barbara J. Brown
Policy & Records Group, WO-560

3 Attachments

- 1 - CEQ's Guidance.CA (2 pp)
- 2 - CA – Report to the Council on Environmental Quality (3 pp)
- 3 - CA – Frequently Asked Questions and Answers (3 pp)

Cooperating Agency Report to the Council on Environmental Quality

Frequently Asked Questions and Answers

1. What are the major changes between the reporting requirement established in January 2002 and this reporting requirement?

The major changes: (1) increase the reporting period from six to twelve months; (2) align the reporting period with the fiscal year; (3) decrease the amount of information reported; (4) simplify the identification of challenges or barriers to establishing cooperating agency status; and (5) report completed rather than initiated environmental assessments.

2. Do agencies report Environmental Impact Statements (EISs) and Environmental Assessments (EAs) if they are a Cooperating Agency (CA)?

No. Report only those EAs and EISs that the agency is responsible for preparing. When more than one federal agency has NEPA responsibilities (e.g. one funds or approves a project that another implements) then the agencies should work together, either as joint-leads or as lead and cooperating agencies, to avoid duplicative NEPA work. The lead agency responsible for preparing the EA or EIS is responsible for submitting the CA report.

3. Who reports the EIS or EA when there are joint lead agencies responsible for preparing the EIS or EA?

Joint lead agencies can be involved when a Tribe, State or local agency with a requirement comparable to NEPA, or another federal agency either (1) proposes or is involved in the same action, or (2) is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity [see 40 CFR §§1501.5 and 1506.2]. When a federal agency is a joint-lead agency with a Tribal, State or local government, the federal agency will report the EA or EIS. When more than one federal agency is a joint-lead, the federal joint-lead agencies should agree on which one federal agency will report the EA or EIS. Although a formal document to establish Cooperating Agency Status is not required, the agencies involved need to clearly understand their respective roles and a formal document or exchange of letters may be helpful in correcting misunderstandings brought on by changing personnel and priorities. When a formal document or an exchange of letters is used, the agency with reporting responsibility should be identified.

4. Which EAs and EISs are reported?

The report will provide information on EISs begun during the fiscal year reporting period, and on EAs completed during the fiscal year reporting period. For purposes of this report, an EIS is begun when the Notice of Intent (NOI) is published in the Federal Register, and an EA is completed when a Finding of No Significant Impact (FONSI) is completed or a NOI to prepare an EIS is published.

5. What is required for an agency to be reported as a Cooperating Agency?

Agencies with either "jurisdiction by law" or "special expertise" are eligible to be cooperating agencies. When they are invited and agree to be cooperating agencies or their request for cooperating agency status is granted, then they qualify and should be reported as cooperating agencies. When more than one federal agency has NEPA responsibilities – or in the case of tribal, state or local governments, responsibilities for requirements in addition to but not in conflict with those in NEPA – then the agencies should work together, either as joint-leads or as lead and cooperating agencies, to avoid redundant, duplicative NEPA work and cooperating agency status is one way to accomplish these responsibilities. Agencies with a permitting or approval role, often referred to as consulting agencies, can be invited to be cooperating agencies and lead agencies are encouraged to actively consider extending cooperating agency status to such agencies.

6. Does the cooperating agency's name go on the EA or EIS?

Yes. For an EIS, the cover must list all cooperating agencies (federal and non-federal) as required by Section 1502.11 of the CEQ NEPA regulations [see <http://ceq.eh.doe.gov/nepa/regs/000925letter.html>]. An EA must list the agencies consulted [see 40 CFR §1508.9] and agencies with cooperating agency status can be listed as a subset of those consulted.

7. Which agencies must be reported when Cooperating Agency status is not established or is ended?

Agencies should be reported in the EIS column "CA Status not Established or Ended" and in the EA report's third row or optional explanatory paragraph when:

- (1) An agency declines an invitation to participate as a Cooperating Agency in writing or verbally. Federal agencies are required to decline in writing and to provide a copy of their reply to the invitation to the Council on Environmental Quality (see 40 CFR §1501.6(c)).
- (2) An agency requests cooperating agency status but an agreement to participate as a Cooperating Agency is not reached with the agency responsible for the NEPA analysis and documentation.
- (3) An agency whose Cooperating Agency status was established but ended prior to completion of the NEPA analysis and documentation.

The reporting agency must indicate the reason that the Cooperating Agency status was not established or was ended. Five main categories of reasons, with examples, are provided on the report form. When there are several reasons, provide the primary reason(s) for not establishing or ending the Cooperating Agency status.

8. How will agencies update the EIS information in subsequent fiscal years?

The reporting agency will provide updated information (for example: new cooperating agencies; new EIS status) in subsequent FYs by submitting the previous EIS report with new information inserted and highlighted.